IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 963 OF 2003
IN
SUIT NO.2627 OF 2000

Dalip K.Daswani ..Plaintiff

Vs.

Jyoti K.Daswani ..Defendant

Mr.N.M.Shah for the plaintiff

Mr.P.M.Shah i/b Bhagwatis Counselling for defendant no.1

CORAM : S.U.KAMDAR, J
DATED : 7TH OCTOBER, 2005

P.C.:

1. The present Notice of Motion has been taken out for appointment of Court Receiver in respect of flat no.7A, Purnima Co-op.Housing Society, 20, Napean Sea Road, Mumbai 26 with all powers under Order XL Rule 1 of the CPC including the power to take possession.

2. The property originally belongs to the deceased father of which the plaintiff and defendant are two of the legal heirs. There are in all total 7 legal heirs, one of whom has expired.

Under clause 9 of the will, it was contemplated that the defendant will be permitted temporary accommodation in the aforesaid flat till she obtains possession of her own flat at Empire Estate Building,k Near Kemp's Corner, Bombay. It is an admitted position that the defendant rather than taking possession of the said flat has sold the said flat under amicable settlement with the occupier who was claiming to be the tenant of the said flat sometime about 1994. From 1994 the defendant is not vacating the flat nor paying any money towards accommodation of the said flat. She is claiming that she is maintaining the said flat and thus entitled to continue inadvertently under clause 9 of the said will. clause 9 in the second part thereof provides that on defendant occupying her own flat as provided in first part the suit flat to be kept for occupation of the married daughters, and other family members, whenever they visit Bombay and subsequently with the consent of the plaintiff the flat be sold and sale proceeds thereof to be utilised for any philanthropic and social purpose.

3. By virtue of not vacating the flat by defendant no.1 the purpose and object of clause 9 cannot be achieved and clause 9 is infact being frustrated. I am of the opinion that the occupation of the defendant in the said flat is illegal and not lawful in as much as only a temporary permission was granted and by virtue of her own act of selling the flat in which she was supposed to shift she has sought to make provision of clause 9 of the will as totally infructuous. The said will is already probated and thus, clause 9 of the will has to be given effect to. In the aforesaid circumstances, I am of the opinion, that the the hearing and final disposal of the present suit, the suit property must be protected. The present suit is filed for recovery of possession in pursuance of clause 9 thereof. The conduct on the part of the defendant is such that she is attempting to make the provisions of will frustrated. In that view of the matter, I appoint Court Receiver, High Court, Mumbai as Receiver. I direct Court Receiver not to dispossess the defendant from the suit premises and appoint him as an agent of court receiver on usual terms and

conditions but without security. Defendants shall however pay royalty as fixed by the Court Receiver. In an event if she does not desire to become agent, Receiver to make further report to the court for further necessary action. Motion disposed of accordingly. No order as to costs.